



John M. Mays
Chief Operating Officer

April 10, 2015

Ms. Linda Downey
Legal Instruments Examiner
USFWS Migratory Bird Permit Office, Region 6
P.O. Box 25486, DFC 60154
Denver, CO 80225-0486

VIA EMAIL AND HARDCOPY

RE: Response to Request for Additional Information on the Eagle Non-Purposeful Take Permit Application for the Dewey-Burdock Project

Dear Ms. Downey:

Powertech (USA) Inc. ("Powertech" or "Company") appreciates the U.S. Fish & Wildlife Service ("USFWS" or "Service") reviewing the Dewey-Burdock Project non-purposeful take permit application for eagle take that is associated with, but not the purpose of, an activity (per 50 CFR § 22.26). Information requested by the Service in its October 10, 2014 email is enclosed.

Please note that although Powertech is providing the additional information requested, the Company has elected to develop the southeastern "Burdock" portion of the project area first. This results in most activities occurring over one mile outside the 0.5-mile buffer of known eagle nests in the northwestern "Dewey" portion of the project area over at least the next two to three years and likely over the next seven years. Maps 1 and 2 of Powertech's January 10, 2014 application show the locations of known eagle nests relative to the Dewey and Burdock areas.

If the Service determines that a take permit is not required at this time based on Powertech's current plans and the enclosed information, Powertech would appreciate receiving such determination from the Service in writing.


In the event of such determination, and unless the Service notifies Powertech otherwise, the following practices will be held as acceptable and compliant with applicable laws and guidance:

- Activities within the 0.5-mile buffer of any *active* eagle nest will be limited to the period between August 16 and October 31. The only exception to this rule will be the possible entry of qualified biologists into the 0.5-mile buffer to conduct wildlife monitoring.
- Work within the 0.5-mile buffer of any *inactive* nest may occur 1) at any time between August 16 and October 31 or 2) at any time between November 1 and August 15 provided no adult, egg, or dependent young has been present at the nest within any 10 consecutive days leading up to work within the 0.5-mile buffer, except for the possible entry of qualified biologists into the 0.5-mile buffer to conduct wildlife monitoring.

The purpose for articulating these practices is to convey acceptable, compliant strategies for working in and around eagle nests at the Dewey-Burdock Project, in the absence of a non-purposeful take permit, for the benefit of Powertech-sponsored field crews and interested regulatory bodies.

Thank you again for your assistance with the Dewey-Burdock Project. Please do not hesitate to contact me at (303) 790-7528 or jmays@powertechuranium.com if you have questions.

Sincerely,



John Mays, P.E.
Chief Operating Officer

Enc.

Email cc: Lisa Scheinost, Powertech, Greenwood Village, CO
Gwyn McKee, Thunderbird Wildlife Consulting, Sheridan, WY
Jack Fritz, WWC Engineering, Sheridan, WY
Haimanot Yilma, US Nuclear Regulatory Commission, Rockville, MD
Kevin Kritz, US Fish and Wildlife Service, Denver, CO
Scott Larson, SD Ecological Services Field Office, Pierre, SD
Stan Michals, SD Game, Fish and Parks, Rapid City, SD

RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION ON THE
USFWS EAGLE TAKE PERMIT APPLICATION FOR THE
DEWEY-BURDOCK PROJECT

Request for Additional Information (“RAI”) 1. BALD EAGLE NESTS BE1a AND BE1b NESTING ACTIVITY: *Although the location for each of these nests is provided in the application, it does not provide information regarding nesting activity at the nests within the last year. Please provide information (outlined below) for last year’s nesting season, and if available, provide the same information for the previous 5 nesting seasons.*

- a) *Whether or not the nests were active;*
- b) *If any young were observed in the nest and how many; and*
- c) *If any young fledged successfully from the nest and how many.*

RAI Response 1: The numbering system for the bald eagle nests represents the original (“BE1a”) and alternate (“BE1b”) nest sites, respectively. The nests are not quite 0.7 miles apart and are within view of each other. A summary of the nesting history for this territory is provided in the following RAI Response Table 1-1.

RAI Response Table 1-1. History of Bald Eagle Nests BE1a and BE1b in the Dewey Portion of the Project Area

Year	Nest Status
2008	BE1a first reported; 1 young fledged
2009	BE1a inactive
2010	Adult(s) seen at BE1a at least once; status unknown
2011	BE1b first reported; adult(s) seen at BE1b at least twice; status unknown
2012	Adult(s) seen at BE1b at least once; status unknown
2013	BE1b active; 1 young hatched; 1 young fledged; BE1a inactive
2014	BE1b active; 2 young hatched; 2 young fledged; BE1a inactive

As shown in the table, nest BE1a was first reported during baseline inventories conducted for the Dewey-Burdock Project in 2008; one young fledged from the nest that year. This nest was inactive in 2009. Powertech did not regularly monitor the nest site between 2010 and 2012, as project activities were quite limited during that period. However, company personnel did observe bald eagles in nest BE1a at least once in 2010. Powertech personnel first saw bald

eagles in nest BE1b in early May 2011 while conducting other project activities¹. South Dakota Department of Game, Fish and Parks (“SDGFP”) personnel also observed the eagles in that nest in spring 2011. Powertech personnel reported seeing bald eagles in the BE1b nest again in 2012. Data recorded by Powertech personnel from 2010 through 2012 were limited to noting isolated sightings of adult bald eagles in a nest; no records were kept regarding specific nesting activities or success during that period. Powertech voluntarily began pre-construction annual monitoring of wintering and nesting bald eagles in fall 2012 and spring 2013, respectively; those efforts were ongoing through fall 2014. One young fledged from the BE1b nest in 2013 and two young fledged from that nest in 2014. The BE1a nest was inactive during 2013 and 2014.

RAI 2. INFRASTRUCTURE: *Although the maps provided with the application are very detailed, and contain a lot of information, we are unable to determine which project infrastructure (buildings, power lines, etc.) is already present within the project area vs. new infrastructure you intend to build for the project (new construction). It is especially important for us to understand where the new infrastructure will be built in relation to nest BE1a and nest BE1b and the ½ mile buffers on each of these two Bald eagle nests.*

The application describes how the infrastructure will be constructed in a manner to minimize disturbance to the nesting Bald eagles. However, without a timetable and a map showing the location of this project infrastructure in relation to the eagle nests, we are unable to determine if the infrastructure will in fact be constructed in the manner you indicate to minimize disturbance to the nesting eagles. To assist us with this determination, please provide the information outlined below:

- a) Provide a timetable, or projected timeline, outlining the major components of the project and when each of these will be constructed.*
- b) When Powertech anticipates the new project construction to begin;*
- c) When Powertech anticipates the new project construction to end;*
- d) Provide a timeline for each major component of the project.*

RAI Response 2: The Dewey-Burdock Project area is divided into two areas, the Dewey area to the northwest and the Burdock area to the southeast. Bald eagle nests BE1a and BE1b are located in the Dewey (northwestern) portion of the project area; the entire Burdock (southeastern) portion is over one mile outside the 0.5-mile buffer of both nests. Maps 1 and 2 of

¹ The year was incorrectly reported as 2009 in Section E, 1(b) of the application.

the application show the locations of both eagle nests relative to the Dewey and Burdock portions of the project area.

At present, existing infrastructure and disturbance activities within the Dewey area consist of S. Dewey Road, which is a gravel county road, a railroad track, two Black Hills Electric overhead power lines, monitoring wells, multiple two-track roads used by ranchers to tend to livestock, pasture fences, an abandoned corral and homestead in Sec. 30 T6S R1E, an abandoned corral and homestead in Sec. 31 T6S R1E, and an occupied residence in Sec. 5 T7S R1E. A recreational vehicle is also occasionally present and occupied at the otherwise abandoned ranch in Sec. 30 T6S R1E.

Within the 0.5-mile buffer of the BE1a nest, existing infrastructure and disturbance activities include an overhead power line, monitoring wells, multiple two-track ranch roads, pasture fences, and the abandoned ranch in Sec. 30 T6S R1E. Within the 0.5-mile buffer of the BE1b nest, existing infrastructure and disturbance activities include monitoring wells, pasture fences and two-track ranch roads. In addition, there is an existing walk-in public hunting area that overlaps the majority of the 0.5-mile buffer for both bald eagle nests. Plate RAI Response 2-1 shows existing Dewey-area features with the exception of pasture fences and the walk-in hunting area, which is subject to change annually.

All other project components shown on Plates 5.3-1 and 5.3-2 (Adapted) of the application will be built by Powertech. A timetable for construction of the major infrastructure components is provided in RAI Response Table 2-1 for the Dewey portion of the project area where nests BE1a and BE1b are located. The location of each development component is shown on the referenced plates accompanying this RAI response. Please note the location of the proposed main overhead power line has been updated since the January 10, 2014 application.

Powertech anticipates beginning project construction soon after receiving authorization from the South Dakota Board of Minerals and Environment (“BME”) on the Company’s Dewey-Burdock Project Large Scale Mine Permit. BME began a hearing regarding the permit in the fall of 2013, but the hearing was suspended that same year pending other federal and state authorizations. Pending authorizations include issuance of Class III and V Underground Injection Control permits by the U.S. Environmental Protection Agency Region 8 and approval of contested Water Rights Permits by the South Dakota Water Management Board. Prior to construction, acceptance of the Avian Monitoring and Mitigation Plan (“Avian Plan”) by SDGFP will also be required.

RAI Response Table 2-1. Project Development Sequence in the Dewey Portion of the Project Area

Development Year	Major Infrastructure Components	Reference
1 & 2	Main overhead power line*	Plate RAI Response 2-2
3 – 6	None planned at this time in the Dewey portion of the project area where the eagle nests are located	---
7	Access roads, satellite processing plant, ponds, portion of first well field, buried pipelines, overhead power lines, Madison water supply well, and deep disposal wells and/or land application areas	Plates RAI Response 2-3a & 2-3b
8 – 11	Well fields and associated buried pipelines, overhead power lines, and access roads	Plates RAI Response 2-4a & 2-4b
12 & beyond	None planned pending results of future exploration drilling	---

* To be built per current APLIC² recommendations to minimize risks of electrocution and collision.

In addition to the major infrastructure components listed in RAI Response Table 2-1, work on existing and new power lines, delineation drilling, and exploration drilling may occur at any time throughout all years of project development. However, work within the 0.5-mile buffer of any *active* eagle nest will be performed only between August 16 and October 31, unless or until a USFWS non-purposeful take permit is received. The exception to this rule will be the possible entry of qualified biologists into the 0.5-mile buffer to conduct wildlife monitoring.

In the event USFWS Region 6 determines no take permit is currently required for the project, Powertech will contact USFWS Region 6 regarding resuming permitting prior to performing work within the 0.5-mile buffer of any *active* eagle nest between November 1 and August 15.

RAI 3. AVIAN MONITORING AND MITIGATION PLAN (Avian Plan): Please provide the status of the Avian Plan.

- a) Has it been completed?***
- b) If not, is there still an opportunity for USFWS to provide input?***

² Avian Power Line Interaction Committee (APLIC). 2006. Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006. Edison Electric Institute, APLIC, and the California Energy Commission. Washington, D.C. and Sacramento, California. 207pp.

_____. 2012. Reducing Avian Collisions with Power Lines: The State of the Art in 2012. Edison Electric Institute and APLIC. Washington, D.C.

RAI Response 3: The Avian Plan has not been completed. Powertech will provide an opportunity for USFWS to comment on the plan prior to finalization.

RAI 4. BALD EAGLE WINTER ROOST SITES: From the USFWS perspective, an observation of a single Bald eagle seen roosting in a single tree would not be the basis to designate a site as a winter roost for Bald eagles. Before it can be determined whether disturbance take of wintering Bald eagles at a roost site would even occur, or the amount of disturbance take, we need to understand the basis used to designate winter roosts for this project.

Listed below are questions related to Bald eagle use of winter roosts in the project area and the requested amount of take for wintering Bald eagles at these roosts.

- a) The map included with the application documents 5 winter Bald eagle roost sites. Per Section E, paragraph 1b of the application, it indicates that up to 3 additional wintering Bald eagles could experience take. Please explain why the application only requests disturbance take for up to 3 wintering Bald eagles when there are 5 documented winter roost sites on the project map?***
- b) Define for us the criteria used to designate the 5 mapped winter roosts as Bald eagle winter roosts.***
- c) Were these 5 mapped sites designated as Bald eagle winter roosts because:***
 - i) There were repeated observations of multiple Bald eagles at these sites over the course of a winter season?***
 - ii) Or, was there documented evidence that multiple Bald eagles used these 5 sites over the course of multiple winter seasons?***
- d) Also, please provide all relevant data and explanations to assist us in understanding if these mapped sites are in fact winter roosts or not.***

RAI Response 4:

- a) As noted in the RAI, up to three (3) additional wintering bald eagles were estimated to potentially experience take. When added to the resident pair, those additional birds result in a total of five (5) wintering bald eagles that could potentially experience take. This***

total (5) is reflected in the last sentence of the third paragraph under Section E, 1(b) of the application.

- b) Powertech agrees no communal bald eagle winter roost sites have been documented in the Dewey-Burdock Project area since surveys began. The criteria used to define roost sites in the application were conservative and may not be consistent with USFWS Region 6 criteria. In preparing the application, consideration was given to the varying criteria provided by local agency personnel in our region regarding roost sites that have not always been consistent with those described in the 2007 National Bald Eagle Management Guidelines³. Local definitions, for example, have ranged from a minimum of six (6) bald eagles present at a given site to a minimum of only one (1) eagle (more recently) to constitute a “roost.” Those varying definitions, plus the small number of wintering eagles documented in the project area over time, resulted in the conservative approach of considering even those sites where a single bald eagle was seen perched in a single tree as a “winter roost.”
- c) Multiple bald eagles have never been documented using any of the five (5) roost sites in the manner described by the USFWS above since baseline surveys were conducted or since annual monitoring began, including:
 - i) Repeatedly within the course of a winter season; or
 - ii) Consistently over the course of multiple winter seasons.

The five (5) roost sites identified on the project map reflect locations where at least one bald eagle was seen perched on at least one occasion over the years (refer to response 4b). Multiple bald eagles were recorded only twice during the broad survey period. During a roost survey conducted in winter 2012/2013, two adult bald eagles (presumably the resident pair) were seen perched in different trees in a small windbreak in the southwest quarter of the northwest quarter of Sec. 30, T6S, R1E (refer to Plates 5.3-1 and 5.3-2 (Adapted) submitted with the application). During a roost survey completed in winter 2013/2014, two adult eagles (again, presumably the resident pair) were observed perched in different trees at the BE1b nest site. All other winter bald eagle sightings consisted of lone individuals.

³ U. S. Department of Interior Fish and Wildlife Service Region 6. 2007. National Bald Eagle Management Guidelines. Available at <http://www.fws.gov/southdakotafieldoffice/NationalBaldEagleManagementGuidelines.pdf>.

- d) Based on the USFWS definitions and clarifications above, and results from additional surveys conducted since the permit application was submitted, no communal bald eagle winter roost sites have been documented in the Dewey-Burdock Project area since surveys began. Bald eagles, including the resident pair, are not consistently present in the project area during winter. Although the pair has been observed perched in adjacent trees near the BE1b nest site at least once, most winter sightings consist of a single bald eagle perched at random locations. As noted in the application, no more than three (3) bald eagles have been recorded during a given winter survey completed over the years.

RAI 5. BALD EAGLE FORAGING/FORAGING HABITAT: Do you have any data or documentation that the Bald eagles nesting in the project area are using, or are not using, the Black-tailed Prairie dog colony which overlaps the area where new project infrastructure will be constructed (per the map included with the application)? If so, please provide all relevant data or documentation relative to this question. We are trying to understand whether or not Bald eagles nesting in this area are foraging at this specific Prairie dog colony and whether or not there is potential for disturbance to eagle foraging activity.

RAI Response 5: Biologists have regularly observed bald eagles hunting in the prairie dog colony in question during targeted monitoring sessions conducted specifically for the BE1 pair over the last 2 years. In addition, prairie dog remains were confirmed below the BE1b nest in both 2013 and 2014 (both successful nesting years for the pair). As a result, it is known with certainty that bald eagles nesting in the BE1 territory are foraging within this specific prairie dog colony.

Foraging disturbance, however, is expected to be limited. As noted in Section E, 1(b) of the application, the eagles are also known to forage in other areas of the BE1 territory including Beaver Creek and other nearby prairie dog colonies, located both within and outside the project boundary. In addition, under both the land application option and the preferred deep disposal well option (shown on RAI Response Plates 2-4a and 2-4b, respectively), the majority of the colony will remain available for prairie dog use throughout the life of the project. Where construction within the existing colony does occur, it is anticipated that associated prairie dogs will relocate to suitable habitat areas located adjacent to the existing colony and remain within the BE1 territory. Since development of the Dewey portion of the project area is not scheduled for several years, an updated map showing the location and size of the colony can be provided at that time, prior to construction.











